

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:)	Group Art Unit: 3751
)	
BALL)	Examiner: Robert M. Fetsuga
)	
Serial No.: 10/674,862)	Confirmation No.: 6280
)	
Filed: September 30, 2003)	<u>DECLARATION PURSUANT</u>
)	<u>TO 37 CFR §1.131</u>
Atty. File No.: 5564-153)	
)	
For: "Overflow Assembly For)	<u>Filed Electronically</u>
Bathtubs and the Like")	

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, William T. Ball declare as follows:

1. I am the inventor of the subject matter above-identified U.S. Patent Application Serial No. 10/674,862, filed September 30, 2003, which is a continuation-in-part of U.S. Patent Application Serial Nos. 10/229,533, filed August 28, 2002, now U.S. Patent No. 6,675,406, and 10/222,062, filed August 16, 2002, now U.S. Patent No. 6,637,050. This Declaration is submitted pursuant to 37 CFR § 1.131 in response to an Office Action dated December 21, 2006 in which U.S. Patent No. 6,618,875 to Oropallo et al. ("Oropallo") having a filing date, and effective prior art date, of March 28, 2002, was cited pursuant to 35 USC § 102(e) as being anticipatory of Claims 20-23 and 33-37 of the above-identified application. In addition, Oropallo has been cited in combination with other previously-cited references in support of various obviousness rejections of Claims 12, 15-18, 19, 23-25, 26-32 and 37-39.

2. I have included herewith the exhibits outlined below that evidence a date of conception of at least February 9, 2000 and diligence between February 9, 2000 and actual or constructive reduction to practice of claimed elements of the invention.

3. Exhibits A and B illustrate that the conception of embodiments of the present invention found in independent Claims 12, 20 and 26 was at least February 9, 2000. More specifically, the figures show a hollow fitting for interconnection to an overflow pipe, wherein the hollow fitting is adapted to receive a nut that cooperates with a flange on the overflow pipe to secure the overflow pipe to a section of a bathtub.

4. Exhibit C illustrates that the conception of embodiments of the present invention found in independent Claim 33 was at least February 9, 2000. More specifically, attention is drawn to attorney notes on the figure that indicate that the hollow fitting and the overflow pipe was contemplated as being constructed in one piece.


5. Exhibit D is U.S. Patent Application Serial No. 09/593,724 that illustrates that aspects of embodiments of the present invention were constructively reduced to practice on June 13, 2000. The application was abandoned on October 15, 2002 in favor of U.S. Patent Application Serial No. 10/229,533, filed August 28, 2002, now U.S. Patent No. 6,675,406.

Exhibit	Description	Relied Upon to Show	Date
A	Engineering Drawings	Conception of multi-piece embodiment of the present invention	2/9/2000
B	Engineering Drawings	Conception of multi-piece embodiment of the present invention	2/14/2000
C	Annotated Engineering Drawings	Conception of one-piece embodiment of the present invention	Prior to June 13, 2000
D	U.S. Patent Application 09/593,724	Constructive reduction of practice of embodiments of the present invention	6/13/2000

In light of the foregoing I affirmatively assert that I was in possession of the subject matter disclosed and claimed in the above-identified prior to the filing date of Oropallo. I also assert that I, and WCM Industries the assignee of the above-identified invention, have been diligent in seeking patent protection for the embodiments of the invention disclosed and claimed in the instant

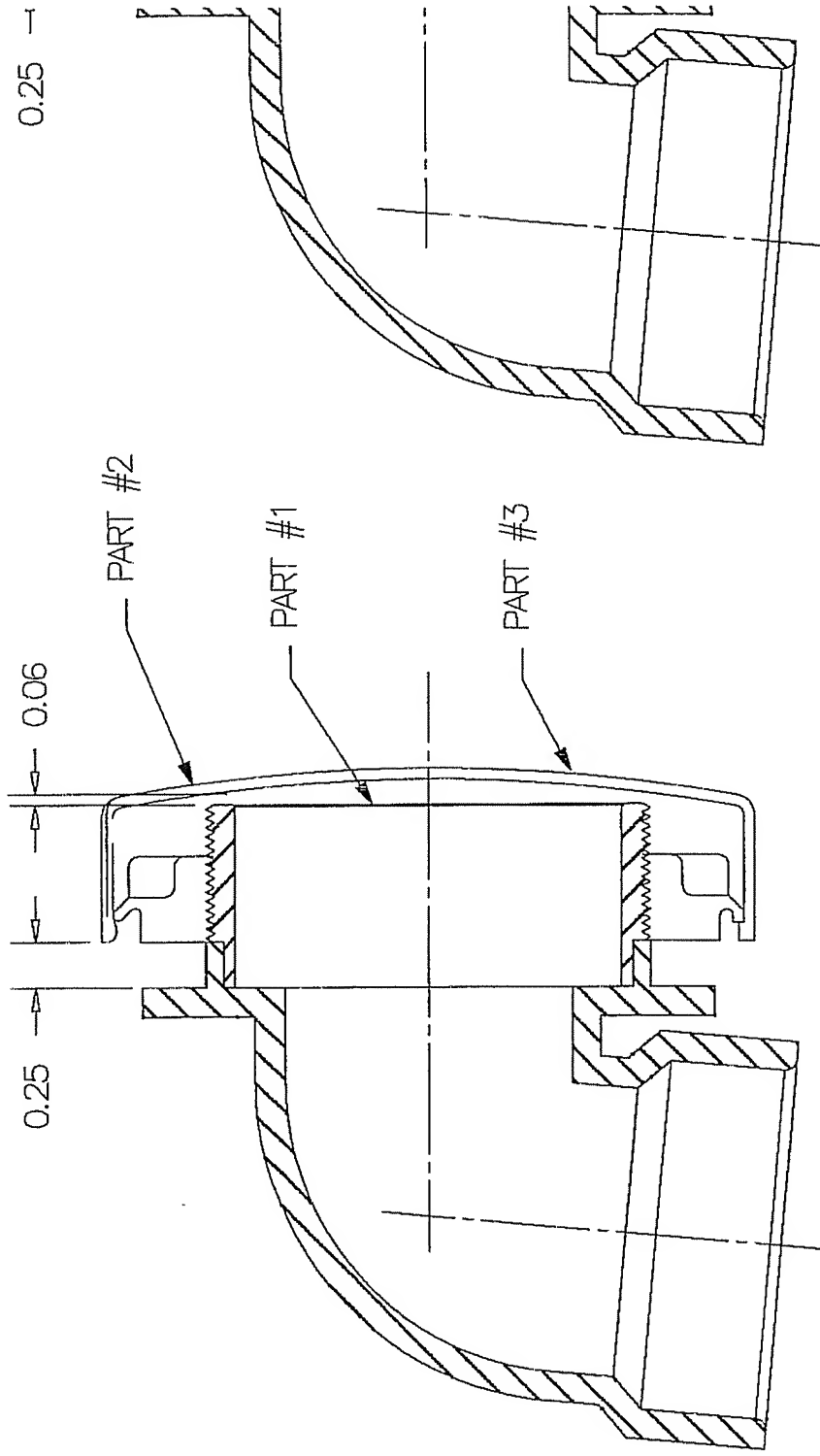
application and those related thereto as evidenced by the filing of U.S. Patent Application Serial Nos. 09/593,724, 10/229,533 and 10/222,062, which are related to the above-identified application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

By 
William T. Ball

Date: 3/12/07

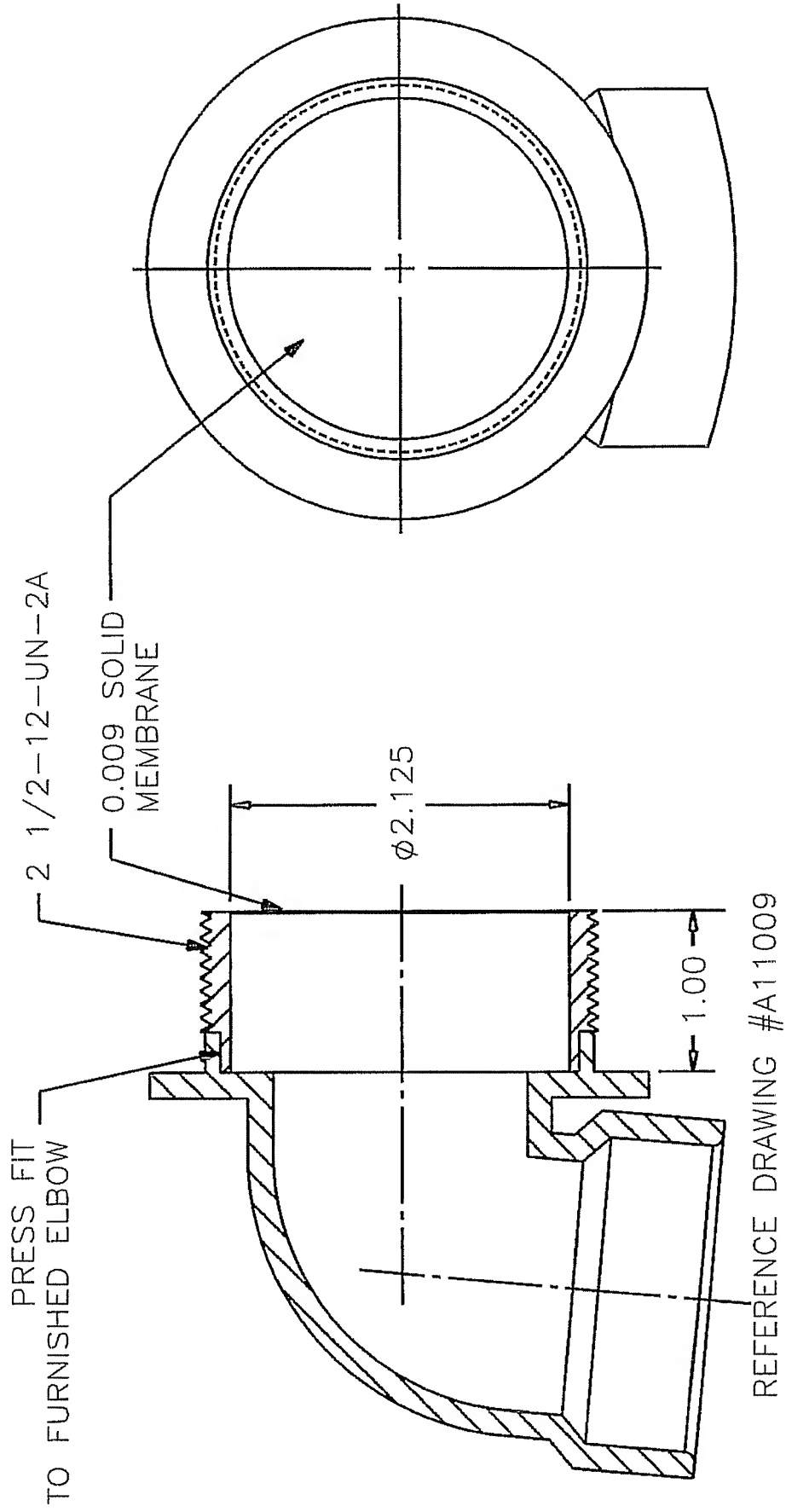
Exhibit A



WATCO
OVERFLOW ELBOW PROTOTYPE
2/9/2000 bc

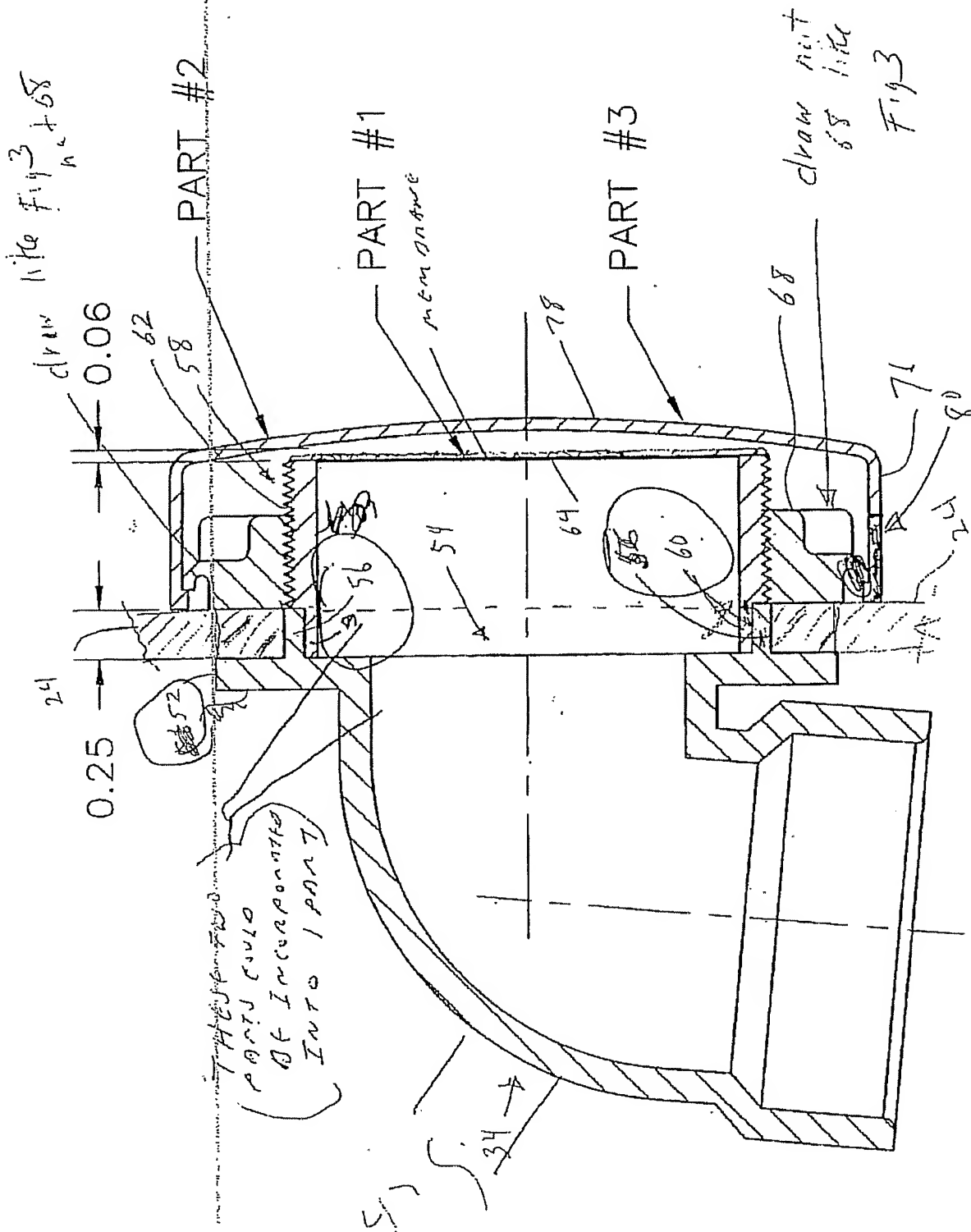
OVERFLOW
2/9/

Exhibit B



WOODFORD
PART #1
2/14/00

Exhibit C



WATCO
OVERFLOW ELBOW PROTOTYPE

2/9/2000 bc

S.J.

Exhibit D

06-15-00

A

Please type a plus sign (+) inside this box → ☐

Approved for use through 09/30/2000. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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UTILITY PATENT APPLICATION TRANSMITTAL (Only for new nonprovisional applications under 37 C.F.R. § 1.53(b))	Attorney Docket No.	PO4447US@
	First Inventor or Application Identifier	William T. Ball
	Title	METHOD & MEANS FOR AN OVERFLOW ASSEMBLY TO BATH TUBS.....
	Express Mail Label No.	EL515384827US

APPLICATION ELEMENTS See MPEP chapter 600 concerning utility patent application contents.	ADDRESS TO: Assistant Commissioner for Patents Box Patent Application Washington, DC 20231
1. <input checked="" type="checkbox"/> * Fee Transmittal Form (e.g., PTO/SB/17) (Submit an original and a duplicate for fee processing) 2. <input checked="" type="checkbox"/> Specification [Total Pages 9] (preferred arrangement set forth below) - Descriptive title of the Invention - Cross References to Related Applications - Statement Regarding Fed sponsored R & D - Reference to Microfiche Appendix - Background of the Invention - Brief Summary of the Invention - Brief Description of the Drawings (if filed) - Detailed Description - Claim(s) - Abstract of the Disclosure 3. <input checked="" type="checkbox"/> Drawing(s) (35 U.S.C. 113) [Total Sheets 5] 4. Oath or Declaration [Total Pages 2] a. <input checked="" type="checkbox"/> Newly executed (original or copy) b. <input type="checkbox"/> Copy from a prior application (37 C.F.R. § 1.63(d)) (for continuation/divisional with Box 16 completed) i. <input type="checkbox"/> DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see 37 C.F.R. §§ 1.63(d)(2) and 1.33(b).	5. <input type="checkbox"/> Microfiche Computer Program (Appendix) 6. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary) a. <input type="checkbox"/> Computer Readable Copy b. <input type="checkbox"/> Paper Copy (identical to computer copy) c. <input type="checkbox"/> Statement verifying identity of above copies ACCOMPANYING APPLICATION PARTS 7. <input type="checkbox"/> Assignment Papers (cover sheet & document(s)) 8. <input type="checkbox"/> 37 C.F.R. § 3.73(b) Statement of Power of Attorney (when there is an assignee) 9. <input type="checkbox"/> English Translation Document (if applicable) 10. <input type="checkbox"/> Information Disclosure Statement (IDS)/PTO-1449 11. <input type="checkbox"/> Preliminary Amendment 12. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503) (Should be specifically itemized) * Small Entity 13. <input checked="" type="checkbox"/> Statement(s) filed in prior application, Status still proper and desired (PTO/SB/09-12) 14. <input type="checkbox"/> Certified Copy of Priority Document(s) (if foreign priority is claimed) 15. <input checked="" type="checkbox"/> Other: Express Mail Label No. EL515384827US

* NOTE FOR ITEMS 1 & 13: IN ORDER TO BE ENTITLED TO PAY SMALL ENTITY FEES, A SMALL ENTITY STATEMENT IS REQUIRED (37 C.F.R. § 1.27), EXCEPT IF ONE FILED IN A PRIOR APPLICATION IS RELIED UPON (37 C.F.R. § 1.28).

16. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment:
☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No. _____
 Prior application information: Examiner _____ Group / Art Unit: _____
 For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 4b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

17. CORRESPONDENCE ADDRESS

☒ Customer Number or Bar Code Label 22885 or ☒ Correspondence address below
 (Insert Customer No. or Attach bar code label here)

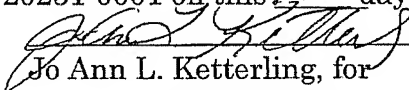
Name	DONALD H. ZARLEY				
	ZARLEY MCKEE THOMTE VOORHEES & SEASE				
Address	801 GRAND AVENUE				
	SUITE 3200				
City	DES MOINES	State	IOWA	Zip Code	50309-2721
Country	U.S.A.	Telephone	515-288-3667	Fax	515-288-1338

Name (Print/Type)	DONALD H. ZARLEY	Registration No. (Attorney/Agent)	18,543
Signature	<i>[Signature]</i>	Date	6-13-00

Business Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date shown below in an envelope as "Express Mail Post Office to Addressee" Mailing Label No. EL515384827US addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231-0001 on this 13 day of June, 2000.


Jo Ann L. Ketterling, for
Donald H. Zarley, Reg. #18,543

Express Mail Label #EL515384827US



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06/13/00

Applicant or Patentee: WILLIAM T. BALL

Serial No. or Patent No:

Filed or Issued:

METHOD AND MEANS FOR AN OVERFLOW ASSEMBLY TO BATHTUBS AND THE LIKE

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS (37 CFR 1.9(f) AND 1.27(c)) - SMALL BUSINESS CONCERN

I hereby declare that I am

[] the owner of the small business concern identified below:

[x] an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN WCM Industries, Inc.

ADDRESS OF CONCERN 2121 Waynoka Road, Colorado Springs, CO 80915

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I/We hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled METHOD AND MEANS FOR AN OVERFLOW ASSEMBLY TO BATHTUBS AND THE LIKE by inventor(s) William T. Ball, described in

[X] the specification filed herewith.

[] application Serial No. _____, filed _____.

Patent No. _____, issued _____

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

**NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).*

FULL NAME

ADDRESS

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of payment, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME AND TITLE OF PERSON SIGNING Kevin Fink, Vice President - Finance

ADDRESS OF PERSON SIGNING 2121 Waynoka Road, Colorado Springs, Colorado 80915

SIGNATURE James L. Smith DATE March 9, 2000

INVENTOR: BALL, WILLIAM T.

TITLE: METHOD AND MEANS FOR AN OVERFLOW ASSEMBLY TO
BATHTUBS AND THE LIKE

BACKGROUND OF THE INVENTION

In new building construction, the plumbers prefer not to put the finished closure valves in the bottom of tubs, or the finished decorative plate over the overflow outlet at the end of the tub until the project is finished because these elements will be often damaged as the construction project is brought to a close. Further, the piping for both of the outlets needs to be checked for leaks before the inspection process is completed. The test involves running water down the vent for the drain until it reaches a level above the tub and the tester then determines whether any of the piping leaks. Thus, when the testing operation arrives, a plug is put in the bottom drain of the tub and some sort of seal plate is placed at the end of the tub on the overflow outlet.

Existing overflow plates have a center opening therein. There are either two or four small screw holes in the plate adjacent the center opening wherein two of the holes are used to hold the plate to the plumbing fixture. In some cases there is a fitting so that the screw hole is located directly in the middle of the access hole. In that case, that hole is in the way when the testing procedure is implemented. In any event, the testing procedure usually involves stuffing a balloon through the large center opening into the pipe in the wall and the pipe is sealed when the balloon is inflated. Further, existing seal plates normally have to be removed when the decorative plate is put on. Two screws which use the screw openings of the plate typically hold the decorative plate in position.

A more recent version is shown in the U.S. Patent 5,890,241 in which an overflow system for a bathtub has an

overflow port and has a drain pipe in connection with the overflow port. A flexible diaphragm is imposed over overflow drain pipe secured to and engages the inner face of the sleeve. Screws extend through the plate which has a center opening. A screw extends through the plate to hold the cap in place. The cap has a conventional side rim extending around the plate and diaphragm. A cut-out portion of the cap provides for water flow. The diaphragm seals the overflow pipe when the system is being tested for leaks with pressurized fluid. Following the tests, when the fluid is removed, the diaphragm is cut or slashed to open the overflow port to provide fluid flow. While this device serves the intended function, it is expensive to make and more cumbersome to assemble.

It is, therefore, a principal object of the invention to provide a method and a means for an overflow assembly for bathtubs and the like which will safeguard the overflow system during construction; prepare the system for testing; and facilitate the final installation of the bathtub hardware.

A further object of the invention is to facilitate the testing procedure of the overflow system before the final installation has taken place, and to permit the assembly of parts without the use of screws, screw holes, and the like.

These and other objects will be apparent to those skilled in the art.

SUMMARY OF THE INVENTION

An overflow system in the bathtub has an overflow port and has a drain pipe in connection with the overflow port. A threaded flange has a stub shoulder on one end which is forced-fitted into a circular sleeve on the overflow port. The threaded flange has exterior threads on its outer surface and a thin diaphragm secured to the end thereof opposite to the stub shoulder. A large sealing washer embraces the outside of the circular flange on the overflow port and extends partially over the threads of the threaded flange. A

large internally threaded nut is threadably mounted on the outer end of the threaded flange and compresses the sealing washer against a vertical flange on the port to seal the connection between the threaded flange and the port. A decorative cap is frictionally snapped into engagement with protrusions on the outer surface of the nut. The cap can be removed if needed to permit the plumber to gain access to the diaphragm to cut it open for fluid flow after they system has been tested for leaks, or put in place after the cut takes place.

BRIEF DESCRIPTION OF THE DRAWINGS

Fig. 1 is a partial perspective view of a conventional bathtub environment utilizing the invention of this application;

Fig. 2 is a large scale section view taken on line 2-2 of Fig. 1;

Fig 3 is a perspective exploded view of the cap, nut, washer, membrane, and upper pipe;

Fig. 4 is a cross sectional view of the assembled components of Fig. 3; and

Fig. 5 is a perspective view showing the piercing of the membrane.

DESCRIPTION OF THE PREFERRED EMBODIMENT

With reference of Figs. 1 and 2, a conventional bathroom structure 10 has a floor 12, and a hollow wall 14 with a wall opening 16 therein. A conventional bathtub ("tub") 18 has a base 20 which rests upon floor 12. Sidewalls 22 extend upwardly from base 20 as does an end wall 24. A bottom 26 dwells in spaced relation to the floor 12.

A conventional drain port 28 is located in bottom 26. A conventional overflow port 30 is located in the end wall 24 (Fig. 2). A vertical drain pipe 32 extends downwardly from drain port 28, and overflow drain pipe 34 extends downwardly from overflow port 30. A horizontal pipe 36 connects pipes

32 and 34. A drain pipe 38 extends downwardly from the junction between pipes 34 and 36.

A conventional vertical vent pipe 40 is located within the hollow wall 14. Pipe 42 interconnects vent pipe 40 and the upper end of overflow drain pipe 34 (Fig. 2). Conventional water pipes 44 extend through hollow wall 40 and are connected to valve 46 which is interconnected to conventional control member 48 and faucet 50.

Fig. 3 shows a radial flange 52 formed on the upper end of pipe 34 and has a center opening or port 54. Water can flow through center opening 54 into drain pipe 34. Sleeve 56 extends longitudinally outwardly from the perimeter of opening 54.

A hollow cylindrical fitting 58 has a hollow cylindrical shoulder 60 on its inner end, a threaded outer surface 62, and a thin plastic diaphragm 64 sealed across its outer end. The shoulder 60 has an outer diameter that can be manually frictionally inserted with the inner diameter of flange 56.

A pliable sealing ring or washer 66 has a center bore 67 which can frictionally receive the exterior surface of fitting 58 to engage the radial flange 52 of port 54 to seal the connection between sleeve 56 and shoulder 60. The longitudinal thickness of washer 66 is less than the longitudinal thickness of fitting 58 so that some of the threaded surface 62 adjacent the diaphragm 64 is exposed when the washer 66 is mounted on fitting 58 in the position described above.

A nut element 68 has a threaded center bore 70 which is compatible with the threaded outer surface 62 of fitting 58. When nut element 68 is tightened on threaded portion 62, the washer 66 is in tight engagement with flange 52 of port 54. The outer periphery 72 of nut element 68 has a series of radially extending lugs 74 which frictionally detachably engage the inner surface of flange 76 of cap 78. Nut element can be tightened on washer 66 either as positioned within cap 78, or before cap 78 and the nut element 68 are engaged. A notch 80 is located in flange 76 and is adapted to receive

overflow water from tub 18 when required to do so. Notch 80 is normally in a 6 o'clock position on flange 76.

It is important to note that diaphragm 64 is of plastic material, as is fitting 58, and is preferably integrally formed with fitting 58 wherein diaphragm 64 and fitting 58 are one unitary component. Diaphragm 64 is a thin circular plate disk that is joined to fitting 58 by its outer peripheral edge engaging the outer peripheral edge of the fitting 58. If the two components are not molded as one unitary structure, the diaphragm 64 could be connected by fusing, hermetically sealed, or by otherwise rigidly attached by its outer peripheral edge to the rearward outer peripheral edges of the fitting by a suitable adhesive. No screws or the like are either required or desired.

In operation, the drainage system comprising the ports 28 and 30, and pipes 34, 36, and 38 are installed as shown in Fig. 3. Vent pipe 40 and connecting pipe 42 are also installed.

In the conventional testing procedure, the port 28 is plugged in any convenient manner. The fitting 58 with diaphragm 64 is installed into drain pipe 34 as described above so there is no fluid access to the upper end of pipe 34 either inwardly or outwardly through overflow port 30. The vent pipe is charged with water at some elevation above pipe 42 so that the building inspectors can check to see if there are any leaks in the system. Having determined that there are no leaks, the water is purged from the system. The plumber can then approach overflow port 30, (since cap 78 is not yet installed) and by using knife 86 or the like, cuts can be made in diaphragm 64 leaving a cutout portion 84 as shown in Fig. 5

It is therefore seen that diaphragm 64 eliminates any need to install or remove any screws or the like for sealing overflow port 30 before or after the testing procedure has taken place. This invention facilitates the testing procedure and reduces the time needed to seal the overflow

port 30, and then to open the diaphragm 64 for possible fluid flow.

It is therefore seen this invention will achieve at least all of its stated objectives.

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the overflow port having a surface for frictionally receiving
an inner end of a hollow fitting having an outer end and
threads on an outer surface,
a thin diaphragm sealing the outer end of the fitting,
a sealing element on the fitting and having a sealing surface
in engagement with a sealing surface of the overflow
port,
a nut having a threaded center opening threadably mounted on
the fitting to exert sealing pressure on the sealing
element,
the nut having means thereon to detachably receive a cap
element thereupon.

6.

The assembly of claim 5 wherein the diaphragm is
integral with said fitting and is held to the fitting only
through having been integrally formed therewith.

7.

The assembly of claim 1 wherein the diaphragm is a
circular membrane and has a diameter equal to an outer
peripheral edge of the fitting, and is connected only to the
fitting and only to the outer peripheral edge of the outer
end of the fitting.

8.

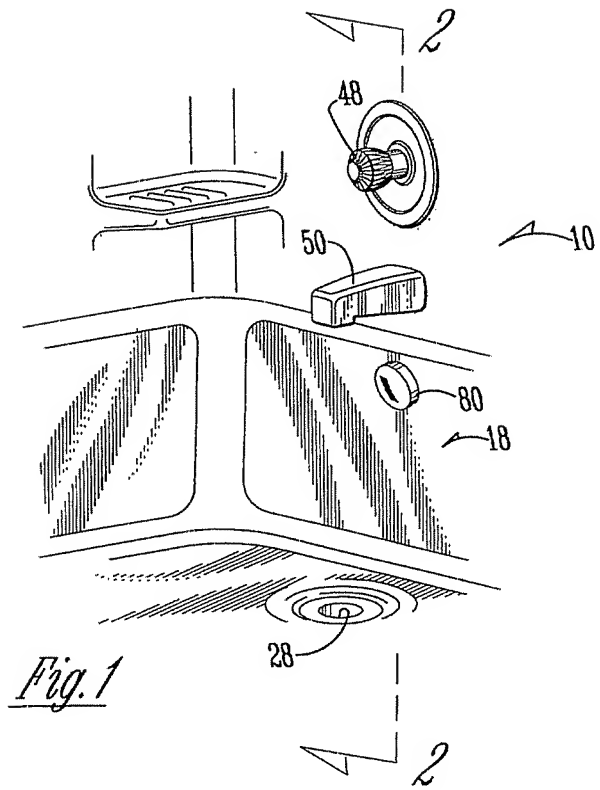
The assembly of claim 5 wherein the diaphragm is a
circular membrane and has a diameter equal to an outer
peripheral edge of the fitting, and is connected only to the
fitting and only to the outer peripheral edge of the outer
end of the fitting.

9.

The assembly of claim 8 whereby the diaphragm is
hermetically sealed to the peripheral edge of the fitting.

[illegible]

9



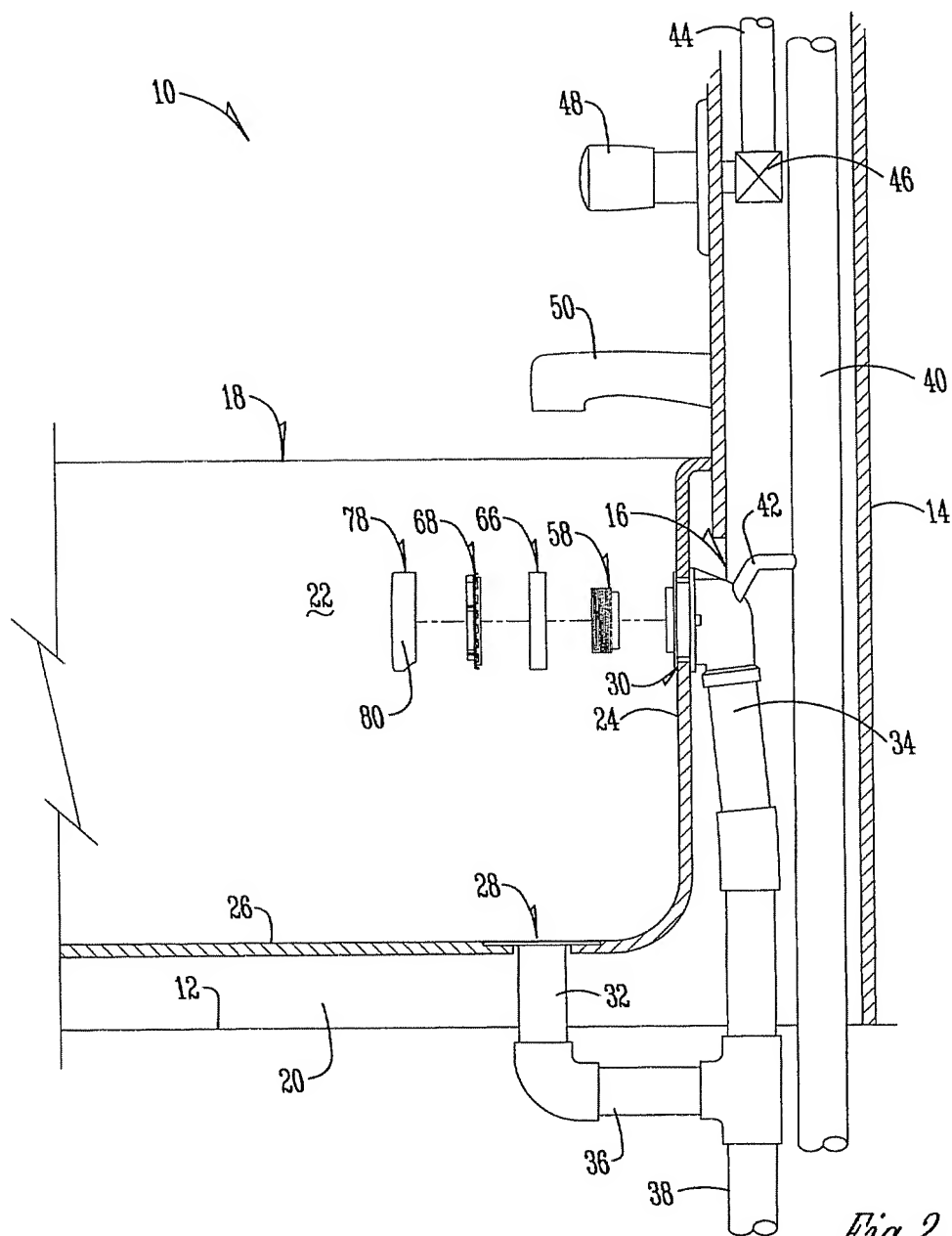


Fig. 2

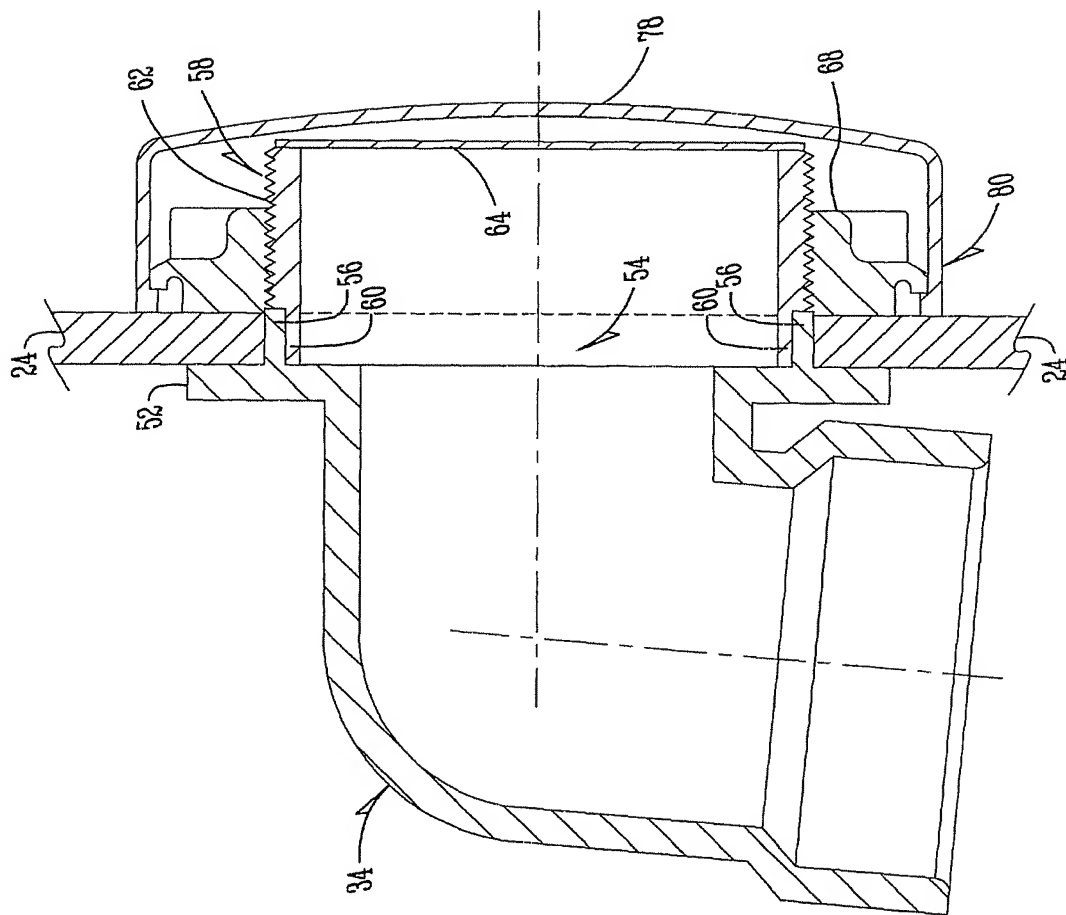
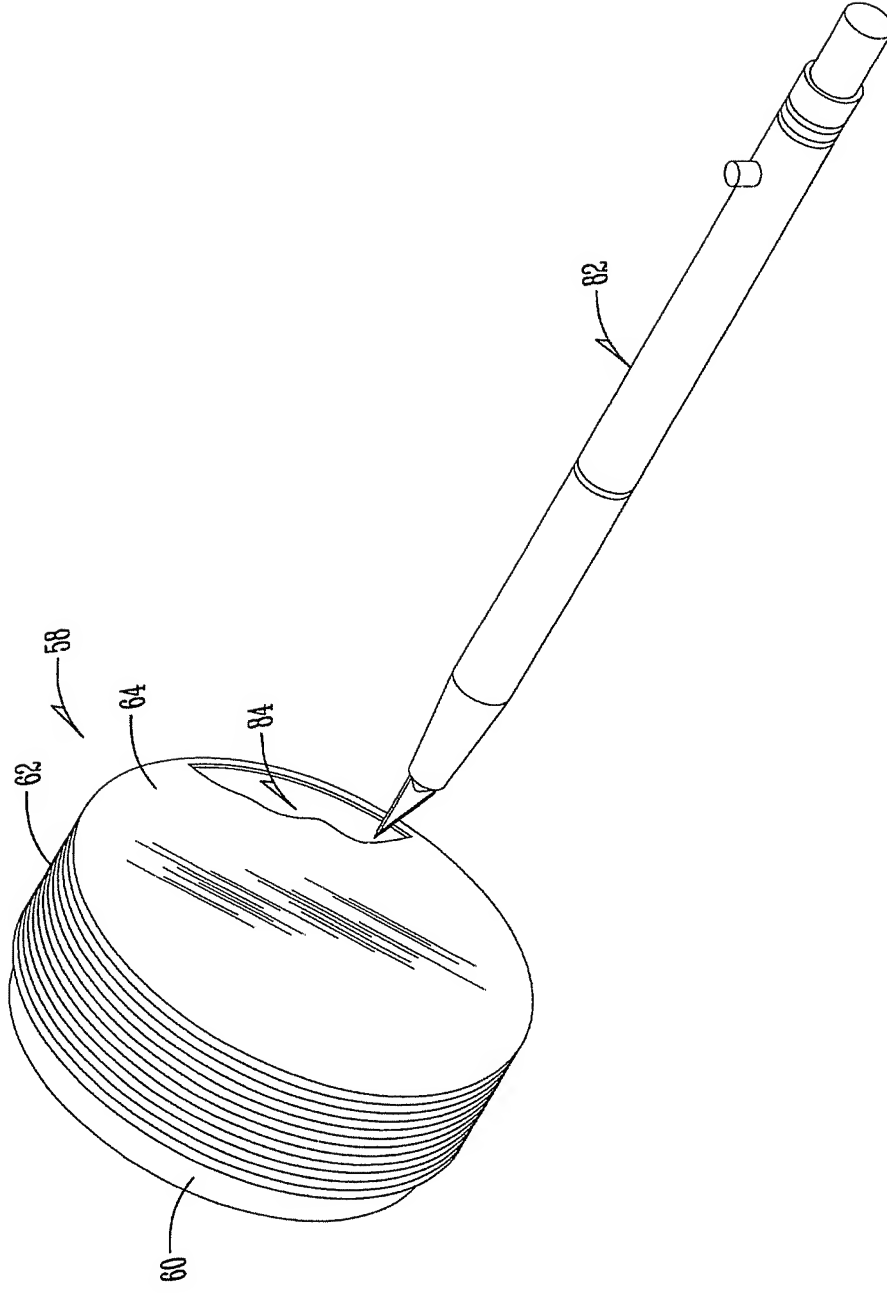


Fig. 4

Fig. 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
COMBINED DECLARATION AND POWER OF ATTORNEY
FOR SOLE INVENTOR

As the below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor, of the subject matter which is claimed and for which a patent is sought on the invention entitled as follows: METHOD AND MEANS FOR AN OVERFLOW ASSEMBLY TO BATHTUBS AND THE LIKE, the specification and drawings of which are attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification and drawings, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code Of Federal Regulations, Section 1.56. I further declare that no application for patent or I, my legal representative or assigns in any country as identified below have filed inventor's certificate on this invention foreign to the United States of America except:

NONE.

Applicant hereby appoints the attorneys of record listed under **Customer No. 22885** at ZARLEY, McKEE, THOMTE, VOORHEES & SEASE, 801 Grand Avenue, Suite 3200, Des Moines, Iowa 50309-2721 (telephone number 515-288-3667 and fax number 515-288-1338), as my attorneys to prosecute this application and to transact all business in the Patent Office connected therewith.

Please direct all correspondence to the attention of Donald H. Zarley, Zarley, McKee, Thomte, Voorhees & Sease, 801 Grand Avenue, Suite 3200, Des Moines, Iowa, 50309-2721 (telephone number 515-288-3667).

I hereby declare that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

10

Date: 6-9, 2000.

Residence: Colorado Springs, Colorado

Post Office Address: 1980 Inwood Circle
Colorado Springs, Colorado 80904

Country of Citizenship: United States of America

This declaration ends with this page.

Abstract